

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 415 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAYSING BHIKHABHAI PARMAR

Versus

AMRUTGIR MOHANGIR GOSWAMI

Appearance:

1. Civil Revision Application No. 415 of 1999
MR NK MAJMUDAR for Petitioner No. 1
MR AJ PATEL for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/04/2002

ORAL JUDGEMENT

1. Heard Mr. Majmudar for the petitioner - original plaintiff. As found from the papers attached to this Revision Application, it is found that this Revision Application was dismissed for default and accordingly

restoration Application was filed being M.C.A.No.781/2000 and the said restoration application was filed by the heirs of Raysing Bhikhabhai Parmar and as per order passed by my brother Justice J.M.Panchal, after hearing the counsel for the other side, the application for restoration was allowed. Though application for restoration was filed by the heirs of deceased, no steps were taken by the petitioner to bring the heirs of deceased Raysing Bhikhabhai Parmar in these proceedings till date. However, without taking a technical contention that the Revision Application is abated, I have heard Mr.Majmudar as well as Mr.A.J. Patel, the learned advocate, who appeared for respondent original defendant.

2. During hearing, Mr. Majmudar has relied upon certain decisions of the Apex Court, namely, in the matter of Murlidhar v. State of U.P., reported in AIR 1974 SC 1924 and in the matter of Nagindas v. Dalpatram, reported in AIR 1974 SC 471 and also placed reliance upon the provisions of Bombay Rent Act. The challenge in this Revision is in respect of the order passed by the learned 2nd Joint District Judge, Vadodara in C.M.A.No.214/98 wherein the defendants have challenged the order passed by the learned 2nd Addl.Small Causes Judge, Vadodara below Application Exh.5 in Rent Suit No.513/97 filed by the petitioner -plaintiff by allowing the Application Exh.5 and confirming the ad interim injunction granted on 10.10.97 till the final disposal of the Suit. On examining the said order passed by the learned trial Judge and on considering the contentions raised in the Appeal filed by the respondents - defendants, the appellate court has allowed the Appeal and directed the plaintiff to hand over possession of the premises temporarily in light of the Agreement Exh.15/1 within 15 days from the date of the order and order passed by the learned trial Judge granting injunction was set aside and while allowing the Appeal, the appellate court has directed the trial court to decide the suit as expeditiously as possible and the record and proceedings were sent by the appellate court to the trial court.

3. This Revision Application is pending since the order passed by this court on 12.3.99 by directing the parties to maintain status quo and from time to time, the said order was extended and even after restoration of the Revision Application, the order maintaining status quo is still in force.

4. It is an undisputed fact that the original plaintiff Raysing Bhikhabhai Parmar had executed an

Agreement with the defendants and as per the Agreement the plaintiff was required to hand over the premises in question to the defendants and the defendants in turn, after demolition of the said old structure to construct a new premises (Flats) and defendants had agreed that after the flats are ready, they shall hand over the newly constructed flat situated on the 3rd floor in favour of three sons of Raysing Bhikhabhai Parmar named in the agreement by treating them as owners of the flat without paying any consideration and for the time being, when the plaintiff is required to vacate the premises for a temporary period for their residence, the defendants had also paid some consideration, which was received by the plaintiff as highlighted in the Agreement by way of rent for the occupation of the premises occupied by the plaintiff and a further sum of Rs.5000/-- by way of deposit was also made. Plaintiff has accordingly approached the trial court for seeking relief against the defendants and the trial court has granted Application Exh.5. In short, the plaintiff, as per the said Agreement, was entitled to the newly constructed flat on 3rd floor without paying any amount and the plaintiff will be treated as an absolute owner of the said Flat.

5. Mr.A.J.Patel, the learned counsel appearing on behalf of the respondents, has also placed on my hand the agreement executed between original plaintiff Raysing Bhikhabhai Parmar and the defendants dated 15.9.97, signed by the parties and the witnesses. Mr.Patel has while opposing this Revision Application vehemently urged that by virtue of the agreement, the petitioners plaintiffs were to hand over the premises occupied by them for temporary period to enable the defendants to demolish the old structure and to put up a building consisting of flats and the defendants were to provide a flat of the same area to the plaintiff without charging anything and they have to occupy the said flat as if they are the owners. The defendants had already paid the amount to enable the plaintiffs to vacate the premises and to occupy the rented premises for which the plaintiffs were not required to spent any amount and a further sum of Rs.5000/-- by way of deposit was also paid. Mr. Patel, learned advocate, appearing for the respondents has further stated before this court under instructions from his client that his client will manage to provide a rented premises consisting of one room and kitchen in the nearby locality where the petitioners are staying and they have not to pay any rent till they have been provided with the new Flat on the 3rd floor as per Agreement and the defendants had undertaken that if the possession of the premises occupied by the petitioners is

handed over to the defendants, the defendants will see that the construction of the building/Flat will be undertaken and the defendants have agreed that as early as possible on completion of the flat, the plaintiffs will be put to possession of the flat as per Agreement. Mr. Patel has submitted that in respect of the rented premises, which the defendants will provide to the petitioners, the petitioners shall not claim any right in respect of the said tenancy and the petitioners shall immediately hand over the said rented premises on getting the newly constructed flat provided to the petitioners.

6. In view of the above and considering the submissions made before me, admittedly Raysing Bhikhabhai Parmar has executed an agreement with the defendants, this court is of the view that the order under challenge is not required to be interfered with while exercising my revisional jurisdiction and the authorities cited are not going to help the petitioners. Accordingly this Revision Application is disposed of. Rule discharged. As the status quo order is in force till today, the same shall stand vacated after the respondents - defendants provide one room and kitchen in the same area to the petitioners, as observed earlier, and the petitioners will hand over the suit premises to the respondents within one week thereafter.

Request made by Mr. Majmudar to join the heirs of Raysing Bhikhabhai Parmar is granted and granted leave to amend the cause title.

(D.K.Trivedi, J)

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